IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO.1769 OF 2004
IN
FIRST APPEAL NO.1766 OF 2003

Office notes, office memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Shri Pethe Advocate holding for Shri R.G.Ketkar
for the Applicant.

Shri A.M.Joshi for the Respondent.

CORAM : ABHAY S.OKA. J,

DATED : 3rd Sept., 2004.

P.C.:

1. Shri Pethe, Advocate appearing for the Applicant states that the decretal amount has been deposited in the trial Court.

2. Heard the learned Counsel appearing for the parties. The Respondent is the original Plaintiff. The Respondent was travelling on a scooter when a tree standing adjacent to the road fell down as a result of which the Respondent sustained serious injuries to his head and other parts of the body. A suit was filed by the Respondent claiming compensation against the Appellant-Corporation. The defence of the Appellant-Corporation seems to be that the fall of tree was an act of God. The said defence was not accepted by the trial Court.

The trial Court accepted the case of the Respondent and awarded compensation of Rs.1,99,100/- with interest thereon at the rate of 15% per annum.

2. From the findings recorded by the trial Court it appears that the Respondent had to undergo a surgery of brain. The documentary evidence has been produced by the Respondent to show the expenditure incurred by him. The case of the Respondent is that a sum of Rs.60,000/- has been spent on medical treatment.

3. Considering the facts and circumstances of the case, the Civil Application is disposed of by the following order:

(i) The Respondent is permitted to withdraw a sum of Rs.60,000/- without furnishing security. However, withdrawal of the said amount will be permitted by the trial Court only on the Respondent filing an undertaking to redeposit the said amount in the event the Appellant succeeds in the present First Appeal.

(ii) Out of the amount deposited by the Appellants, the Respondents will be permitted to withdraw a further sum of

Rs.1,50,000/- on furnishing security to the satisfaction of the trial Court.

(iii) The rest of the amount will be invested by the trial Court in any nationalised bank in fixed deposit initially for a period of three years. The fixed deposit shall be renewed from time to time till disposal of the First Appeal.

(iv) The decree passed by the trial Court against the Appellants to deposit Rs.1000/- per month will remain stayed.

(v) There will be no order as to costs.

Judge.